

## REMARKS

This paper is an amendment accompanying a request for continued examination (RCE). It is respectfully requested that prosecution on the merits be re-opened.

Claims 1-46 are pending. Claims 1-46 are rejected.

Claims 1-16, 18-26, 28, 29-32, 45 and 46 are rejected under 35 U.S.C. 103 as being obvious over Bailey in view of Pinkerton.

Claim 1 previously recited, in part, “the incoming TPS comprising a TPS header, an aligned upper layer protocol (ULP) header, a complete ULP data unit (ULPDU), a marker header and a marker” and “wherein the marker is disposed in the complete ULDPDU and points to the marker header.”

In the Office Action, it is alleged that Bailey does not teach about the marker header and the marker, but that Pinkerton makes up for the teaching deficiencies of Bailey. Applicant respectfully disagrees. Pinkerton at col. 2, lines 33-36 (cited in the Office Action) describes a marker that points forwardly to the ULP PDU header in the next PDU, and not the same PDU. Note that claim 1 recited that the incoming TPS has a marker header and a marker, but that the marker points to the marker header in the same incoming TPS. Thus, neither Pinkerton nor Bailey, individually or combined, teaches the elements as previously set forth in claim 1.

Applicant believes that claim 1 is patentable over the cited documents, as asserted, for at least the above reasons, but has amended claim 1 to further clarify the subject matter. In particular, Applicant respectfully amends claim 1 so that the marker points backward to the marker header. Furthermore, although it is evident from the elements as previously set forth in claim 1 that the marker and the marker header to which the marker points are in the same incoming TPS, Applicant has explicitly and perhaps redundantly stated that the marker and the marker header to which the marker backward points are in the same incoming TPS.

Similar arguments with respect to claim 1 before being amended can also be applied to independent claims 20-22, 32 and 45 before being amended. Nevertheless, although Applicant

believes that independent claims 20-22, 32 and 45 are patentable over the cited documents, as asserted, Applicant has similarly amended independent claims 20-22, 32 and 45 to further clarify the subject matter recited therein.

For at least the above reasons, it is respectfully requested that the rejection under 35 U.S.C. 103 be withdrawn with respect to claims 1-16, 18-26, 28, 29-32, 45 and 46.

In view of at least the above, it is also respectfully requested that the rejection under 35 U.S.C. 103 be withdrawn with respect to the remaining rejected claims.

In amending independent claims 1, 20-22, 32 and 45, Applicant has drawn upon subject matter related to markers and/or marker headers that has been incorporated by reference. In particular, the subject matter is set forth in U.S. Application No. 10/230,643, filed August 29, 2002, now U.S. Patent No. 7,295,555 B2, which was incorporated by reference in its entirety into the present application.

Claim 20 is rejected under 35 U.S.C. 101 as allegedly being directed to non-statutory subject matter. Applicant respectfully disagrees, but has amended claim 20 to include a processor and a memory. It is respectfully requested that the rejection under 35 U.S.C. 101 be withdrawn with respect to claim 20.

Claims 21, 22, and 45 are rejected under 35 U.S.C. 112. However, the claims, as originally filed, support the FPDU header being part of the ULPDU header, for example. In addition, said U.S. Application No. 10/230,643, which was incorporated by reference in its entirety, describes markers in the TCP payload and markers not being adjacent to the ULP header (which includes the FPDU header). Thus, there is support for a marker not being adjacent to the FPDU header. It is respectfully requested that the rejection under 35 U.S.C. 112 be withdrawn.

It is respectfully submitted that claims 1-46 are in condition for allowance.

Applicant does not necessarily agree with the Examiner's characterization of the documents made of record, either alone or in combination, or the Examiner's characterization of

recited claim elements. Furthermore, Applicant respectfully reserves the right to argue the characterization of the documents of record, either alone or in combination, to argue what is allegedly well known, allegedly obvious or allegedly disclosed, or the characterization of the recited claim elements should that need arise in the future.

Applicant respectfully reserves the right to pursue, without prejudice, subject matter that has been withdrawn, amended and/or cancelled in a continuing application, for example.

With respect to the present application, Applicant hereby rescinds any disclaimer of claim scope made in the parent application or any predecessor or related application. The Examiner is advised that any previous disclaimer of claim scope, if any, and the alleged prior art that it was made to allegedly avoid, may need to be revisited. Nor should a disclaimer of claim scope, if any, in the present application be read back into any predecessor or related application.

In view of at least the foregoing, it is respectfully submitted that the present application is in condition for allowance. Should anything remain in order to place the present application in condition for allowance, the Examiner is kindly invited to contact the undersigned at the below-listed telephone number.

The Commissioner is hereby authorized to charge any additional fees, to charge any fee deficiencies or to credit any overpayments to the deposit account of McAndrews, Held & Malloy, Account No. 13-0017.

Date: August 8, 2011

Respectfully submitted,

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U.S. Application No. 10/751,732, filed January 2, 2004  
Attorney Docket No. 14230US03  
Amendment dated August 8, 2011  
Accompanying RCE filed August 8, 2011

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